

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN W. BOLSCH and THERESA  
BOLSCH,

**VERIFIED ANSWER**

Plaintiffs,

Civil No: 07 CIV 7680 (RPP)

- against -

MW MECHANICAL, INC.,

Defendant.  
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**C O U N S E L O R S :**

The defendant, MW MECHANICAL, INC., by its attorneys COHEN, KUHN & ASSOCIATES, answering the plaintiffs' complaint herein, respectfully alleges, upon information and belief, as follows:

**THE PARTIES**

1. The defendant denies knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs designated "1", "2", "34", "35", "38", "39" and "41" of the Complaint.
2. The defendant denies the allegations in the form as alleged, contained in the paragraphs designated "3", "4", "5", "6", "7", "9", "10", "11", "12", "13", "19", "30", "31", "32" and "33" of the Complaint and refers all conclusions of law to the Court and conclusions of fact to the trier of fact.
3. The defendant denies the allegations contained in the paragraphs designated "14", "15", "16", "17", "18", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "36", "37" and "40" of the Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION**

4. Defendant repeats and reiterates each and every denial contained in paragraphs designated: “1” through “41” as recited in paragraph “42” of the complaint.

5. The defendant denies the allegations contained in the paragraphs designated “43”, “44”, “45”, “46”, “47” and “48” of the Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION**

6. Defendant repeats and reiterates each and every denial contained in paragraphs designated: “1” through “48” as recited in paragraph “49” of the complaint.

7. The defendant denies the allegations contained in the paragraph designated “50” of the Complaint.

8. The defendant denies the allegations contained in the paragraphs designated “51”, “52 and “53” of the Complaint.

**AS AND FOR A THREE CAUSE OF ACTION**

9. Defendant repeats and reiterates each and every denial contained in paragraphs designated: “1” through “53” as recited in paragraph “54” of the complaint.

10. The defendant denies the allegations contained in the paragraphs designated “55”, “56”, “57” and “58” of the Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION**

11. Defendant repeats and reiterates each and every denial contained in paragraphs designated: “1” through “58” as recited in paragraph “59” of the complaint.

12. The defendant denies knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraph designated “60” of the Complaint.

13. The defendant denies the allegations contained in the paragraphs designated “61” and “62” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

14. Upon information and belief, that the defendant asserts that this case falls within the limited liability provision of State law applicable as substantive law in the federal courts and that the liability of the answering defendant, if any, shall be limited to its equitable share of the total liability.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

15. Upon information and belief, that any past or future costs or expenses incurred or to be incurred by the plaintiffs for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty, be replaced or indemnified in whole or in part from a collateral source as defined by State substantive law as applicable to the Federal Courts.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

16. Upon information and belief, any injuries or damages allegedly sustained by the plaintiffs were the result of the plaintiffs' own failure to mitigate said injuries or damages, and if any judgment is recovered against the defendant, said judgment should be apportioned and reduced by the percentage of the failure by the plaintiffs to mitigate said injuries or damages.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

17. Upon information and belief, that this complaint of the plaintiffs fails to state a cause of action the Federal Rules of Civil Procedure.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

18. Upon information and belief, if plaintiff sustained the injuries alleged in his complaint, then such injuries were not the result of the answering defendant's action or inaction, but rather were the result of intervening and/or superseding acts or occurrences over which the answering defendant did not have control.

**AS AND FOR A SIXTH CAUSE OF ACTION**

19. Upon information and belief, that the facts of this case as alleged by plaintiffs do not constitute any recognizable cause of action under any provision of New York's Labor Law.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

20. Upon information and belief, that the actions of the plaintiff had certain risks attendant thereto, which were obvious and well known to the plaintiff at all times, and those risks were assumed by plaintiff and whatever injuries and damages the said plaintiff received and which are complained of by plaintiff herein, arose from and were caused by those risks thus assumed by plaintiff, and well known to the plaintiff herein.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

21. Upon information and belief, plaintiff is limited to Worker's Compensation or its Federal equivalent for the aforesaid injuries and is precluded from getting any recovery against this answering defendant.

**AS AND FOR A NINTH AFFIRAMTIVE DEFENSE**

22. Upon information and belief the venue in which plaintiff has brought the within action is an improper venue pursuant to applicable Federal Rule and/or decisional law.

**WHEREFORE**, defendant demands judgment dismissing the complaint of the plaintiffs herein with costs.

Dated: New York, New York  
October 18, 2007



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By: Gary P. Asher (GPA 1188)  
COHEN, KUHN & ASSOCIATES  
Attorneys for Defendant  
MW MECHANICAL, INC.  
Two Park Avenue, 6<sup>th</sup> Floor  
New York, New York 10016  
(212) 553-8736

TO: LAW OFFICES OF MICHAEL J. ASTA  
(MJA 1035)  
Attorneys for Plaintiffs  
JOHN W. BOLSCH and THERESA BOLSCH  
450 Seventh Avenue, Suite 2205  
New York, NY 10123  
(212) 244-6555



**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK     )  
                                      ) SS:  
COUNTY OF NEW YORK    )

**GARY P. ASHER**, being duly sworn, deposes and says:

I am an attorney associated with the firm of COHEN, KUHN & ASSOCIATES, the attorneys of record for defendant, MW MECHANICAL, INC., in the within action.

I have read the foregoing **VERIFIED ANSWER** and know the contents thereof.

The same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

This verification is made by deponent and not by defendants as defendants do not reside in New York County.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

***Review of File Contents***

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York  
October 18, 2007



**GARY P. ASHER (GPA 1188)**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                      ) SS:  
COUNTY OF NEW YORK    )

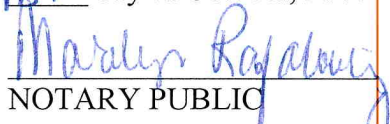
**MARIE SOUFFRANT-SANTIAGO**, being duly sworn, deposes and says that she is employed in the law office of COHEN, KUHN & ASSOCIATES at Two Park Avenue, 6<sup>th</sup> Floor, New York, NY 10016, that on the 18<sup>th</sup> day of October, 2007, deponent, who is not a party to this action and is over eighteen years of age, served the annexed - **FRCP RULE 7.1 STATEMENT, VERIFIED ANSWER TO AMENDED COMPLAINT WITH CROSS-CLAIMS, ATTORNEY'S VERIFICATION, DEFENDANT MW MECHANICAL, INC.'S FIRST SET OF INTERROGATORIES, NOTICE FOR PRODUCTION OF DISCOVERY MATERIALS, DEMAND FOR FRCP RULE 26 DISCLOSURE, DEMAND FOR PHYSICAL EXAMINATION PURSUANT TO RULE 35 OF THE FEDERAL RULES OF CIVIL PROCEDURE, DEMAND FOR EXPERT WITNESS INFORMATION, DEMAND FOR COLLATERAL SOURCE INFORMATION, NOTICE OF DEPOSITION UPON ORAL EXAMINATION-**upon:

LAW OFFICES OF MICHAEL J. ASTA  
(MJA 1035)  
Attorneys for Plaintiffs  
JOHN W. BOLSCH and THERESA BOLSCH  
450 Seventh Avenue, Suite 2205  
New York, NY 10123  
(212) 244-6555

in this action, by depositing a true copy thereof properly and securely endorsed in a duly postpaid wrapper, in a post-office box in the County of New York, New York regularly maintained by the government of the United States at Two Park Avenue, 6<sup>th</sup> Floor, New York, NY 10016 and under the care of the New York, New York Post-office, which is the post-office of COHEN, KUHN & ASSOCIATES, attorneys for the defendant, **MW MECHANICAL, INC.**, herein directed to the addresses shown above, that being the addresses within the State designated by said attorneys for that purpose upon the last preceding papers in this action.

  
**MARIE SOUFFRANT-SANTIAGO**

Sworn to before me this  
18<sup>th</sup> day of October, 2007

  
NOTARY PUBLIC

MARILYN RAFALOWITZ  
Notary Public, State of New York  
No. 41-4980251  
Qualified in Queens County 2011  
Commission Expires April 15, 2011